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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/067,934	02/08/2002	Andrea Manganini	Q68360	6545
23373	7590	02/22/2006	EXAMINER	
SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037			LI, SHI K	
			ART UNIT	PAPER NUMBER
			2633	

DATE MAILED: 02/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/067,934

Applicant(s)

MANGANINI ET AL.

Examiner

Shi K. Li

Art Unit

2633

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-7 is/are rejected.
- 7) ☒ Claim(s) 1 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 23 December 2005 has been entered.

Claim Objections

2. Claim 1-3 and 6-7 are objected to because of the following informalities:

Claim 1 recites in lines 6-7 "nodes or network elements of a span protected by said ring protection". To the understanding of the Examiner, it should read "nodes or network elements adjacent to a span protected by said ring protection".

Claim 1 recites in line 11 "managing said span protection for said span". To the understanding of the Examiner, it should read "managing a transition from said ring protection to said span protection for said span".

Claim 4 recites in line 14 "means for managing said span protection for said span". To the understanding of the Examiner, it should read "means for managing a transition from said ring protection to said span protection for said span".

Claims 6-7 are multiple dependent claims and identified as (previous presented). However, the record indicates that claims 6-7 have been amended to single dependent format in a preliminary amendment filed 8 February 2002. In amendment filed 8 April 2005, the claims were put in multiple dependent format without formally amending the phrase from "claim 1" to "claims

1 to 3". Please make a note whether claims 6-7 should be in single dependent format or multiple dependent format to make the record clear.

Appropriate correction is required.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 6 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim 6 claims computer program which is non-statutory as it is not "acts" being performed (see MPEP 2106).

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 2-5 and 7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2 recites in line 2 "the node adjacent to the ring protection". Since "ring protection" is an action or event, it is unclear the meaning of adjacent to such action and the node to which it refers.

6. Claim 3 recites the limitation "managing the ring protection" in lines 1-2 of the claim. There is insufficient antecedent basis for this limitation in the claim.

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Claim 4 recites in line 1 "A ring network element capable of ..." and recites in line 4 "said ring network comprising". It is unclear whether the claim claims a "ring network element" or a "ring network".

Claim 5 recites in line 3 the limitation "the network element". However, there are a plurality of nodes of elements and it is unclear to which network element the limitation refers.

Claim 7 claims a computer-readable medium which is an apparatus. However, claim 7 depends on any one of claims 1 to 3, which are method claims. Claim which is intended to embrace both apparatus and method is precluded by language of 35 U.S.C 101, which set forth statutory classes of invention in alternative only, and is also invalid under 35 U.S.C 112, second paragraph, since claim which purports to be both method and apparatus is ambiguous and therefore does not particularly point out and distinctly claim subject matter of invention. See *Ex parte Lyell*, 17 USPQ2d 1548 (Bd. PA&I 1990).

Allowable Subject Matter

7. Claim 1 would be allowable if the above objection being properly addressed.
8. Claim 4 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action, and properly address the above objection.
9. Claims 2-3 and 5 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims, and to properly address the above objection.

Conclusion

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shi K. Li whose telephone number is 571 272-3031. The examiner can normally be reached on Monday-Friday (8:30 a.m. - 5:00 p.m.).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Chan can be reached on 571 272-3022. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

skl
15 February 2006



Shi K. Li
Patent Examiner